

# Senate File 2349 - Introduced

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SF 2233)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the preneed sale of cemetery and funeral  
2 merchandise and funeral services.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5542SV 82  
5 av/sc/8

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1 1 Section 1. Section 523A.102, subsection 27, Code  
1 2 Supplement 2007, is amended to read as follows:  
1 3 27. "Seller" or "preneed seller" means a person doing  
1 4 business within this state, including a person doing business  
1 5 within this state who sells insurance, who advertises, sells,  
1 6 promotes, or offers to furnish cemetery merchandise, funeral  
1 7 merchandise, funeral services, or a combination thereof when  
1 8 performance or delivery may be more than one hundred twenty  
1 9 days following the initial payment on the account whether the  
1 10 transaction is completed or offered in person, through the  
1 11 mail, over the telephone, by the internet, or through any  
1 12 other means of commerce. "Seller" or "preneed seller"  
1 13 includes any person performing any term of a purchase  
1 14 agreement executed within this state, and any person  
1 15 identified under a burial account as the provider of cemetery  
1 16 merchandise, funeral merchandise, funeral services, or a  
1 17 combination thereof. "Seller" or "preneed seller" does not  
1 18 include a person who has an ownership interest in a seller or  
1 19 preneed seller but who is not actively engaged in advertising,  
1 20 selling, promoting, or offering to furnish such cemetery  
1 21 merchandise, funeral merchandise, funeral services, or a  
1 22 combination thereof.

1 23 Sec. 2. Section 523A.201, subsections 2, 3, and 8, Code  
1 24 Supplement 2007, are amended to read as follows:  
1 25 2. If a seller agrees to furnish cemetery merchandise,  
1 26 funeral merchandise, funeral services, or a combination  
1 27 thereof and performance or delivery may be more than one  
1 28 hundred twenty days following the initial payment on the  
1 29 account, a minimum of eighty percent of all payments made  
1 30 under the purchase agreement shall be placed and remain in  
1 31 trust until the person for whose benefit the funds were paid  
1 32 dies. Beginning on January 1, 2009, the minimum amount of all  
1 33 payments made under a purchase agreement which shall be placed  
1 34 and remain in trust shall increase by two percent each year  
1 35 until by January 1, 2018, and every year thereafter, the total  
2 1 amount of all payments made under a purchase agreement shall  
2 2 be placed in and remain in trust as provided in this section.

2 3 3. If a purchase agreement for cemetery merchandise,  
2 4 funeral merchandise, funeral services, or a combination  
2 5 thereof provides that payments are to be made in installments,  
2 6 the seller shall deposit eighty percent of each payment in the  
2 7 trust fund until the full amount required to be placed in  
2 8 trust has been deposited. If the purchase agreement is  
2 9 financed with or sold to a financial institution, the purchase  
2 10 agreement shall be considered paid in full and the trust  
2 11 requirements shall be satisfied within fifteen days after the  
2 12 seller receives funds from the financial institution.  
2 13 Beginning on January 1, 2009, the minimum amount of each  
2 14 installment payment made under a purchase agreement which  
2 15 shall be placed and remain in trust shall increase by two  
2 16 percent each year until by January 1, 2018, and every year  
2 17 thereafter, the total amount of all installment payments made  
2 18 under a purchase agreement shall be placed in and remain in

2 19 trust as provided in this section.

2 20 8. Interest or income earned on amounts deposited in trust  
2 21 shall remain in trust under the same terms and conditions as  
2 22 payments made under the purchase agreement, ~~except provided~~  
2 23 that:

2 24 a. ~~Interest or income earned on or before June 30, 2007,~~  
2 25 ~~on amounts deposited in trust on or before June 30, 2007, may~~  
2 26 ~~be withdrawn on or before December 31, 2008, in an amount~~  
2 27 ~~representing the difference between the amount needed to~~  
2 28 ~~adjust the trust funds for inflation as set by the~~  
2 29 ~~commissioner based on the consumer price index and the~~  
2 30 ~~interest or income earned during the preceding year, not to~~  
2 31 ~~exceed fifty percent of the total interest or income on a~~  
2 32 ~~calendar-year basis.~~

2 33 b. ~~Interest or income earned on or before June 30, 2008,~~  
2 34 ~~on amounts deposited in trust on or before June 30, 2008, may~~  
2 35 ~~be withdrawn on or before December 31, 2008, by a limited~~  
3 1 ~~liability corporation that was formed in 2002 for the purpose~~  
3 2 ~~of purchasing a cemetery from a foreign entity reorganizing~~  
3 3 ~~under bankruptcy and such corporation is comprised of six~~  
3 4 ~~establishments all located within the same county may withdraw~~  
3 5 ~~so much of the interest or income as represents in an amount~~  
3 6 ~~representing the difference between the amount needed to~~  
3 7 ~~adjust the trust funds for inflation as set by the~~  
3 8 ~~commissioner based on the consumer price index and the~~  
3 9 ~~interest or income earned during the preceding year not to~~  
3 10 ~~exceed fifty percent of the total interest or income on a~~  
3 11 ~~calendar-year basis.~~

3 12 c. ~~The early withdrawal of interest or income under this~~  
3 13 ~~provision paragraph "a" or "b" of this subsection does not~~  
3 14 ~~affect the purchaser's right to a credit of such interest or~~  
3 15 ~~income in the event of a nonguaranteed price agreement,~~  
3 16 ~~cancellation, or nonperformance by such limited liability~~  
3 17 ~~corporation the seller.~~

3 18 d. ~~Authorization of early withdrawal of interest or income~~  
3 19 ~~under paragraph "a" or "b" of this subsection is contingent~~  
3 20 ~~upon the seller's full compliance with all applicable laws and~~  
3 21 ~~rules governing trust funds under this chapter. The burden of~~  
3 22 ~~proof is on the seller to demonstrate such compliance in an~~  
3 23 ~~examination or other request by the commissioner. A seller's~~  
3 24 ~~failure to demonstrate such compliance is grounds for license~~  
3 25 ~~revocation or other disciplinary action and shall result in~~  
3 26 ~~such remedial orders by the commissioner as the commissioner~~  
3 27 ~~deems necessary to replace improperly withdrawn interest or~~  
3 28 ~~income.~~

3 29 Sec. 3. Section 523A.203, subsection 6, Code Supplement  
3 30 2007, is amended by adding the following new paragraph:

3 31 NEW PARAGRAPH. d. Use any funds required to be held in  
3 32 trust pursuant to section 523A.201 to purchase an insurance  
3 33 policy or annuity.

3 34 Sec. 4. Section 523A.405, subsection 8, Code Supplement  
3 35 2007, is amended to read as follows:

4 1 8. The amount of the surety bond shall equal eighty  
4 2 percent of the payments received pursuant to purchase  
4 3 agreements, or the applicable portion thereof, for cemetery  
4 4 merchandise, funeral merchandise, funeral services, or a  
4 5 combination thereof, and the amount needed to adjust the  
4 6 amount of the surety bond for inflation as set by the  
4 7 commissioner based on the consumer price index. The seller  
4 8 shall review the amount of the surety bond no less than  
4 9 annually and shall increase the bond as necessary to reflect  
4 10 additional payments. The amount needed to adjust for  
4 11 inflation shall be added annually to the surety bond during  
4 12 the first quarter of the ~~establishment's~~ seller's fiscal year.  
4 13 Beginning on January 1, 2009, the minimum amount of the surety  
4 14 bond shall increase by two percent each year until by January  
4 15 1, 2018, and every year thereafter, the amount of the surety  
4 16 bond shall equal the total amount of the payments received  
4 17 pursuant to purchase agreements, or the applicable portion  
4 18 thereof, for cemetery merchandise, funeral merchandise,  
4 19 funeral services, or a combination thereof, and the amount  
4 20 needed to adjust the amount of the surety bond for inflation  
4 21 as set by the commissioner based on the consumer price index.

4 22 Sec. 5. Section 523A.502, subsection 6, Code Supplement  
4 23 2007, is amended to read as follows:

4 24 6. A sales agent licensed pursuant to this section shall  
4 25 satisfactorily fulfill continuing education requirements for  
4 26 the license as prescribed by the commissioner by rule.  
4 27 However, this continuing education requirement is not  
4 28 applicable to a sales agent who is also a licensed insurance  
4 29 producer under chapter 522B or a licensed funeral director

4 30 under chapter 156.

4 31 Sec. 6. Section 523A.601, subsection 6, paragraph a, Code  
4 32 Supplement 2007, is amended to read as follows:

4 33 a. A purchase agreement that is funded by a trust shall  
4 34 include a conspicuous statement in language substantially  
4 35 similar to the following language:

5 1 "For your prearranged funeral agreement, we will deposit  
5 2 not less than eighty percent of your payments in trust at  
5 3 (name of financial institution), (street address), (city),  
5 4 (state) (zip code) within fifteen days following receipt of  
5 5 the funds. Beginning on January 1, 2009, the minimum amount  
5 6 of your payments that will be placed in trust will increase by  
5 7 two percent each year until by January 1, 2018, and every year  
5 8 thereafter, the total amount of all payments you make under  
5 9 your prearranged funeral agreement will be placed in trust  
5 10 within fifteen days following receipt of the funds. For your  
5 11 protection, you have the right to contact the financial  
5 12 institution directly to confirm that the deposit of these  
5 13 funds occurred as required by law. If you are unable to  
5 14 confirm the deposit of these funds in trust, you may contact  
5 15 the Iowa insurance division for assistance by calling the  
5 16 insurance division at (telephone number) or by mail at (street  
5 17 address), (city), Iowa (zip code)."

5 18 Sec. 7. NEW SECTION. 523A.810A ELECTRONIC FILING.

5 19 The commissioner shall, by rule, develop a system and  
5 20 procedures and a format for electronic filing of documents  
5 21 required to be filed with the commissioner under this chapter.

5 22 Sec. 8. Section 523A.811, subsection 1, paragraph c, Code  
5 23 Supplement 2007, is amended to read as follows:

5 24 c. The amount of funds currently held in trust for  
5 25 cemetery merchandise, funeral merchandise, and funeral  
5 26 services is less than ~~eighty percent of all payments made~~  
5 27 ~~under the purchase agreements referred to in the amount~~  
5 28 ~~required in section 523A.201, subsection 2 or 3, as~~  
5 29 ~~applicable.~~

#### 5 30 EXPLANATION

5 31 This bill relates to the sale of cemetery and funeral  
5 32 merchandise and funeral services that are furnished more than  
5 33 120 days after the initial payment on the account.

5 34 Code section 523A.102 is amended to provide that the  
5 35 definition of "seller" or "preneed seller" does not include a  
6 1 person who has an ownership interest in such a seller or  
6 2 preneed seller but who is not actively engaged in furnishing  
6 3 cemetery and funeral merchandise and funeral services.

6 4 Code section 523A.201(2) is amended to provide that  
6 5 beginning on January 1, 2009, the minimum amount of payments  
6 6 made under a purchase agreement for such merchandise and  
6 7 services that is required to be held in trust increases by 2  
6 8 percent per year for 10 years until January 1, 2018, and  
6 9 thereafter the total amount of all payments made are required  
6 10 to be held in trust. Currently, only 80 percent of such  
6 11 payments are required to be held in trust. A similar  
6 12 requirement applies to installment payments made under a  
6 13 purchase agreement in Code section 523A.201(3).

6 14 Code section 523A.201(8) is amended to allow interest or  
6 15 income earned on certain amounts deposited in trust to be  
6 16 withdrawn by the seller by specified dates.

6 17 Code section 523A.203(6) is amended to provide that a  
6 18 preneed seller shall not use any funds required to be held in  
6 19 trust pursuant to Code section 523A.201 to purchase an  
6 20 insurance policy or annuity. Such funds include payments made  
6 21 to a seller pursuant to a preneed sales of merchandise  
6 22 purchase or agreement.

6 23 Code section 523A.405 is amended to provide that the  
6 24 minimum amount of a surety bond that is filed in lieu of a  
6 25 trust fund for payments received under a purchase agreement  
6 26 must also, beginning on January 1, 2009, increase by 2 percent  
6 27 per year until by January 1, 2018, and every year thereafter  
6 28 the amount of the bond must equal the total amount of payments  
6 29 received, or the applicable portion received for cemetery and  
6 30 funeral merchandise and funeral services, plus an amount  
6 31 needed to adjust the bond for inflation.

6 32 Code section 523A.502 is amended to provide that continuing  
6 33 education requirements for sales agents do not apply to a  
6 34 sales agent who is also a licensed insurance producer under  
6 35 Code chapter 522B or a licensed funeral director under Code  
7 1 chapter 156.

7 2 Code section 523A.601 is amended to require that the  
7 3 disclosure information given to purchasers of such merchandise  
7 4 and services inform them of the increased trust fund  
7 5 requirements.

7 6 New Code section 523A.810A requires the commissioner of  
7 7 insurance to develop, by rule, a system and procedures for  
7 8 electronic filing of documents under this Code chapter.  
7 9 Code section 523A.811 is amended to provide that the  
7 10 commissioner of insurance must notify the attorney general of  
7 11 the potential need for establishment of a receivership for a  
7 12 seller who is not meeting the increased trust fund  
7 13 requirements.  
7 14 LSB 5542SV 82  
7 15 av/sc/8